



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006024
First-tier Tribunal No:
EA/01227/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 May 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

OLUCHUKWU NDUKA UMUNNAKWE
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akindele of Blackfields Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 19 April 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his application under the EU Settlement Scheme (EUSS).

2. The appellant is a national of Nigeria born on 2 November 1982. He made an application under the EUSS on 27 June 2021 as the spouse of a relevant EEA citizen whom he had married on 10 September 2020 in a customary marriage. His application was refused on 11 November 2021 on the grounds that he did not meet the

requirements for settled or pre-settled status as set out in Appendix EU to the Immigration Rules. That was because he had not demonstrated that he was free to enter into a marriage with the EEA citizen on 10 September 2020 or that the marriage certificate he had produced was valid, given that he had stated, in previous applications for a visa in July 2018 and March 2019, that he was married to a different person and he had not produced any evidence of that marriage being terminated. Further, with regard to settled status, the respondent considered that the appellant had not provided sufficient evidence of having been resident in the UK for a continuous qualifying period of five years or of the relevant EEA citizen having been resident in the UK with him for a corresponding qualifying period.

3. On 20 November 2021 the appellant requested a reconsideration of the decision on the grounds that he had inadvertently omitted relevant document from his initial application, namely an amended marriage certificate correctly referring to him as a divorcee (rather than the previous, incorrect certificate referring to him as a bachelor) and his divorce certificate. There is no information before me to suggest that he received a response.

4. The appellant then appealed against the respondent's decision and referred, in his grounds of appeal, to the inadvertent omission of those relevant documents. He subsequently submitted a bundle of documents to the First-tier Tribunal, on 19 May 2022, which included a statement from himself and his wife, the amended marriage certificate, confirmation of the customary marriage on 10 September 2020, an affidavit from his mother confirming the marriage, his reconsideration request of 20 November 2021, his marriage certificate for his previous marriage and his divorce certificate.

5. The appellant's appeal came before First-tier Tribunal Judge Burnett as a 'papers' case on 11 May 2022 and was dismissed on 1 November 2022, on the grounds that the appellant had failed to establish his case as he had failed to provide the documents to which he had referred in his grounds of appeal.

6. The appellant sought, and was granted, permission to appeal to the Upper Tribunal on the grounds that the judge had failed to take into account the appeal bundle which had been filed with the First-tier Tribunal on 19 May 2022.

7. In a Rule 24 response, the respondent accepted that the relevant documents had not been considered by Judge Burnett and, whilst noting that the judge may have decided to place no weight on the documents, nevertheless invited the Upper Tribunal to remit the matter back to the First-tier Tribunal for a *de novo* hearing.

8. At the hearing before me, Ms Everett stood by the Rule 24 response in so far as the error of law was concerned. However she submitted that there was no need for the matter to be remitted to the First-tier Tribunal since the decision could simply be re-made in this Tribunal by allowing the appeal. She accepted that the only issue taken against the appellant in the refusal decision was the validity of the marriage and that the documents now submitted properly addressed that matter. She said that there was no indication in the Home Office records that the respondent had any concerns with the documentary evidence in that regard.

9. In light of Ms Everett's concession I advised the parties that I was setting aside Judge Burnett's decision and would re-make the decision by allowing the appellant's appeal. Clearly the appellant had produced a bundle of documents which provided a direct response to the respondent's concerns about the validity of his marriage to the

sponsor and those documents had not been considered by the First-tier Tribunal. As such the First-tier Tribunal's decision could not stand. That being essentially the only reason given by the respondent for refusing the appellant's application, and no issue having been taken with the reliability of any of the documentary evidence, the appropriate outcome was for the appeal to be allowed on the grounds that the appellant met the requirements for pre-settled status under the EUSS.

Notice of Decision

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. Judge Burnett's decision is set aside. I re-make the decision by allowing the appellant's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 April 2023